

THE NEW FEDERAL RULES OF APPELLATE PROCEDURE: CHANGES IN STYLE AND SUBSTANCE

Warren W. Harris*

Attorneys practicing before the federal circuit courts of appeals are working under a new set of rules. An entirely rewritten version of the Federal Rules of Appellate Procedure took effect on December 1, 1998.¹ Many of the changes resulted from the application of uniform drafting guidelines to effect a complete revision of style.² The style revisions were generally intended to be non-substantive. During the review process,

* Partner, Bracewell & Patterson, L.L.P., Houston, Texas; Chair, Appellate Practice Section, Houston Bar Association; Board Certified, Civil Appellate Law, Texas Board of Legal Specialization.

1. This project was the culmination of several years' work. In 1991, the Standing Committee on the Federal Rules of Practice and Procedure began a style process to make uniform the different sets of federal rules and to simplify and clarify them. Inconsistencies in the rules arose in part because they were first enacted more than twenty-five years ago and have subsequently been amended twelve times.

Proposed substantive amendments to rules 26.1, 29, 35, and 41 were published in September 1995. *See Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, Civil, Criminal Procedure and Evidence*, 116 S. Ct. 321 (1995). These amendments were incorporated in the style revisions published in April 1996 by the Judicial Conference Advisory Committee on Federal Rules of Appellate Procedure (the "Advisory Committee"). To complicate matters further, substantive revisions to rules 5 and 5.1 and form 4 were published in August 1996. *See Amendments to Federal Rules*, 117 S. Ct. 317 (1996). Finally, an amendment of rule 23 of the Federal Rules of Civil Procedure was proposed, adding a provision for interlocutory appeals from class action certification orders. *See Amendments to Federal Rules of Civil Procedure, Criminal Procedure, Evidence and Appellate Procedure*, 177 F.R.D. 530 (1998). The Supreme Court sent the final text of the amended rules to Congress on April 24, 1998. *See Amendments to Federal Rules of Civil Procedure, Criminal Procedure, Evidence and Appellate Procedure*, 177 F.R.D. 530 (1998).

The new rules' effective date was December 1, 1998, as Congress declined to exercise its power under 28 U.S.C. § 2074 to alter them before that time. The new rules "govern in all proceedings . . . commenced [after December 1, 1998] and, insofar as just and practicable, all proceedings then pending." 177 F.R.D. at 534.

2. The guidelines were prepared by Bryan A. Garner for the Style Subcommittee of the Standing Committee on the Federal Rules of Practice and Procedure. *See Bryan A. Garner, Guidelines for Drafting and Editing Court Rules*, 169 F.R.D. 176 (1997).

however, the Advisory Committee made some substantive revisions to eliminate perceived ambiguities and inconsistencies in the rules. The Advisory Committee also made significant substantive changes to rules 27, 28, and 32. All of these proposed revisions were initially published for comment in April 1996.³

This article will discuss these substantive changes⁴ to the Federal Rules of Appellate Procedure as they apply to ordinary civil cases,⁵ and the substantive changes to rule 23 of the Federal Rules of Civil Procedure.

A. Rule 3

Under former rule 3(b), it was unclear whether appeals could be consolidated without court order if the parties stipulated to the consolidation. The rule was amended to expressly require a court order to consolidate appeals. The amended rule also requires a court order to join appeals after separate notices of appeal have been filed.⁶

B. Rule 3.1

Rule 3.1, dealing with appeals from judgments of magistrate judges under 28 U.S.C. § 636(c), was deleted. In

3. See Proposed Amendments to the Federal Rules of Appellate Procedure, 165 F.R.D. 117 (1996). Although not published as a redlined version due to the complete textual rewrite, the proposed rules amendments were published in a two-column format with the Advisory Committee's notes. It is worth noting that some of the committee's proposed changes were not reflected in the April 1998 rules promulgated by the Supreme Court, while other changes were made in the April 1998 rules promulgated by the Supreme Court that did not originate in the April 1996 proposed amendments.

4. Non-substantive changes to many of the rules will not be specifically discussed. For the full text of all the new rules, see Amendments to Federal Rules of Civil Procedure, Criminal Procedure, Evidence and Appellate Procedure, 177 F.R.D. 530, 534-82 (1998).

5. Substantive changes were also made to rules that affect other types of appeals, including rule 17(b), affecting agency appeals; rule 22, affecting habeas corpus and section 2255 proceedings; rules 3(d), 4(c), and 25(a)(2)(C), affecting inmate appeals; and rule 4(b), affecting criminal appeals.

6. See Advisory Committee Note, 165 F.R.D. at 134. A joint appeal is treated as a single appeal and the joint appellants file a single brief. In a consolidated appeal, the separate appeals do not merge into one. The parties do not proceed as a single appellant, and the appellants are not parties to each other's appeal; separate judgments are entered. See *United States v. Tippett*, 975 F.2d 713, 716-19 (10th Cir. 1992).

1996, Congress removed a party's option to appeal a magistrate's ruling to the district court.⁷ All appeals from decisions of magistrates now go directly to the appropriate circuit court of appeals, so this provision was no longer necessary.

C. Rule 4

Rule 4(a)(6) permits a district court to briefly reopen the time for appeal if a party has not received notice of the entry of judgment. The rule was amended in order to require the moving party to show that the party did not receive notice "from the district court or any party." This new language broadens the type of notice that can preclude reopening the time for appeal. Under the former rule, only notice from a party or the clerk barred reopening. The new language was intentionally designed to prevent reopening the time for appeal if the movant had notice from the court itself.⁸

D. Rule 5

New rule 5 is intended to govern all discretionary appeals from district court judgments and orders.⁹ New rule 5(a)(2) states that the petition must be filed within the time provided by the statute or rule authorizing the appeal or, if no time is specified, within the time provided in rule 4(a) for filing a notice of appeal. New rule 5(b)(2) establishes a uniform time of seven days for filing an answer or cross-petition. New rule 5(d)(2) clarifies existing practice by specifically stating that the date

7. Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, 110 Stat. 3847.

8. See Advisory Committee Note, 165 F.R.D. at 145.

9. In 1992, Congress added subsection (e) to 28 U.S.C. § 1292, which provided that the Supreme Court has power to prescribe rules that "provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for" in section 1292. The amendments to rule 5 were prompted by the possibility of new statutes or rules authorizing interlocutory appeals. In fact, rule 23(f) of the Federal Rules of Civil Procedure creates the first such type of interlocutory appeal. Rather than adding separate rules governing such appeals, amended rule 5 will govern these appeals. This includes interlocutory appeals under 28 U.S.C. § 1292(b), (c)(1), (d)(1) & (2) and the discretionary appeal from 28 U.S.C. § 636(c). Effective December 1, 1998, it also includes an interlocutory appeal under rule 23(f) of the Federal Rules of Civil Procedure. See *infra* Section P.

when the order granting permission is entered serves as the date of the notice of appeal for calculating time under the rules; a notice of appeal need not be filed.

E. Rule 5.1

Like former rule 3.1, rule 5.1 was deleted because it applied only to appeals from a district court's appellate review of a magistrate's decision, pursuant to 28 U.S.C. § 636(c)(5). This category of appeals was eliminated by the Federal Courts Improvement Act of 1996.¹⁰

F. Rule 26

The rules governing computation of time have been specifically extended to include any local rules. If a local rule establishes a time limit, rule 26(a) governs the computation of that period.

G. Rule 26.1

Any non-governmental corporate party must file a corporate disclosure statement. Although the amendment to rule 26.1 drops the requirement that a corporate party identify subsidiaries and affiliates issuing shares of stock to the public, the rule now requires that the party list all of its stockholders that are publicly held companies owning ten percent or more of its stock. The rule still mandates disclosure of a corporate party's parent corporation.

H. Rule 27

Several substantive changes have been made to rule 27, which governs motions. Rule 27(a)(1) requires a motion to be in writing unless the court permits otherwise. Although this practice was implicit in the prior rule, it is explicit in the new rule. This provision does not prevent oral motions, such as those made during oral argument, and does not disturb the practice in

10. See *supra* note 7.

those circuits that permit certain procedural motions, such as motions for extension of time to file a brief, to be made by telephone and ruled on by the clerk. Any affidavit filed in support of the motion must contain only factual information and not legal argument.

New rule 27(a)(2)(B)(iii) requires that when a motion requests substantive relief, the movant must attach as an exhibit the trial court's opinion. The motion itself must set out any legal argument because the rule bars a movant from filing a separate brief in support of the motion. In addition, movants are no longer required to prepare a notice of motion or a proposed order.

New rule 27(a)(3) extends the time for responding to a motion from seven days to ten days. A response to a motion may request affirmative relief, but the title of the response must alert the court to the request for relief. A new provision has been added as rule 27(a)(4) permitting the filing of a reply to a response; the reply must be filed within seven days after service of the response.

Rule 27(b) regarding disposition of procedural motions is largely unchanged. The new rule clarifies that a party may file a motion for reconsideration of a disposition by either the court or the clerk. A new provision states that if the motion is granted before the response is filed, the response does not act as a motion for reconsideration; a party must file a new motion addressing the order granting the motion.

The format requirements for motions have been moved from rule 32(b) to amended rule 27(d)(1). While the motion need not have a cover, it must have a caption as well as a descriptive title identifying the purpose of the motion and the party or parties for whom it is filed. New rule 27(d)(2) limits the length of motion or response to twenty pages and a reply to ten pages. Rule 27(e) expressly provides that there is no right to oral argument on a motion.

I. Rule 28

Several substantive changes have been made to rule 28, which governs the contents and preparation of briefs. Many of the substantive changes were necessary to conform rule 28 to the

changes in rule 32.¹¹ The corporate disclosure statement is now listed in rule 28(a) among the required contents of the appellant's brief. The statement of facts is now listed separately from the statement of the case. The certificate of compliance in new rule 32(a)(7) is also listed as a required item. The provisions of former rule 28(g), providing for the length of briefs, have been moved to rule 32, which deals with the format for briefs.

J. Rule 29

The rule governing briefs of amicus curiae has been entirely rewritten. The amendments to rule 29(b) require that the amicus brief be filed concurrently with the motion requesting leave to file the brief. In addition to stating the movant's interest and the reasons why an amicus brief is desirable, the motion must state the relevance of the matters asserted to the disposition of the case.

New rule 29(c) lists the items from rule 28 that must be included in an amicus brief. The cover of the brief must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. New rule 29(d) imposes a page limit for an amicus brief of no more than half of the maximum length of a party's principal brief.¹² Rule 29(e) allows an amicus curiae to file its brief seven days after the principal brief of the party being supported is filed. Under rule 29(f), no amicus curiae may file a reply brief, except by the court's permission. Finally, while the court's permission is still needed for the amicus curiae to participate in oral argument, the rule no longer requires an extraordinary reason to justify such participation.

K. Rule 32

Rule 32, governing the form of briefs and other papers, has been substantially amended. Amended rule 32(a)(1) now allows "light" paper, not just white paper, to be used; parties can now

11. See *infra* Section K.

12. Normally, therefore, an amicus brief will not exceed fifteen pages. See *infra* Section K.

use cream or buff paper or recycled paper that may not be white. The amended rule also specifically requires reproduction of text with a clarity that meets or exceeds that of a laser printer.¹³

New rule 32(a)(2) specifically requires that the number of the case be centered at the top of the cover and that not only counsel's address, but also telephone number, appear on the brief's cover. The title of the document must identify the party or parties for whom the document is filed.

Rule 32(a)(3) permits binding in any manner that is secure and that permits the brief to lie reasonably flat when open; a staple will suffice as long as it sufficiently secures the pages. Rule 32 omits the provisions for pamphlet-size briefs, i.e., briefs prepared by a commercial printer. Under rule 32(a)(4), margins must be at least one inch on all four sides. These new rules also apply generally to the preparation of an appendix, which was previously governed by rule 32(b).

New rule 32(a)(5) deals with typeface. The brief writer has two options: proportionally spaced typeface¹⁴ or monospaced typeface.¹⁵ A proportionally spaced typeface must be fourteen point or larger, but footnotes can be printed with twelve-point type. A proportionally spaced typeface must have serifs,¹⁶ although headings and captions may employ sans-serif type. A monospaced typeface cannot contain more than ten and one-half characters per horizontal inch. New rule 32(a)(6) governs type styles. Although a brief must generally use a plain, roman style, it may employ italics or boldface for emphasis. Case names must be either italicized or underlined.

Dramatic changes were made in how to determine the length of briefs. New rule 32(a)(7) describes page limitation and type-volume limitation methods. Rule 32(a)(7)(A) limits the

13. This means a printer resolution of 300 dots per inch or greater. See Advisory Committee Notes, Proposed Amendments to the Federal Rules of Appellate Procedure, 165 F.R.D. 117, 238 (1996). A typewriter or daisy wheel printer would be sufficient and some—but not all—ink jet printers would comply. A dot matrix printer would not comply with the new rule.

14. Proportionally spaced typeface gives a different amount of horizontal space to characters depending on the character's width. For example, the character "w" is given more horizontal space than the character "i."

15. A monospaced typeface gives all characters the same amount of horizontal space. For example, the character "w" is given the same horizontal space as the character "i."

16. A serif is a small line used to finish off the main stroke of a letter. For example, this typeface has serifs. This typeface does not.

length of a principal brief to thirty pages and a reply brief to fifteen pages. This page-length provision, however, is really an opt-out provision from the type-volume limitations. A brief complying with these page limits complies with the type-volume limitation without further question or certification. Under rule 32(a)(7)(B), however, a principal brief may exceed thirty pages as long as it does not contain more than 14,000 words or, if it uses a monospaced typeface, does not contain more than 1,300 lines of text. Reply briefs are limited to no more than half the type-volume of principal briefs. Headings, footnotes, and quotations count toward the word and line limitations, but the corporate disclosure statement, table of contents, table of authorities, oral argument statement, and certificates of counsel do not. If a brief does not comply with the thirty-page/fifteen-page limits, new rule 32(a)(7)(C) requires the attorney to certify that the brief complies with the type-volume limitations. Luckily, the person preparing the certificate can rely on the word or line count from the word-processing system used to prepare the brief.

New rule 32(c) establishes the form of all other papers except motions, which are governed by new rule 27(d). Any other paper, including a petition for rehearing and petition for rehearing en banc, must comply with rule 32(a), except that a cover is not necessary and the new length rules using type-volume limitation do not apply.

New rule 32(d) deals with local variation of briefing rules. Under this amended rule, a brief that complies with the form requirements of the national rule is acceptable in every court of appeals. A local rule may not impose requirements that are not in the national rule. By local rule or order in a particular case, a court of appeals may accept documents that do not meet all of the form requirements of rule 32.

L. Rule 34

The former rule regarding oral argument has been amended to delete reference in rule 34(a) to a local rule for determining whether to grant oral argument. The amendments make the criteria in rule 34 for allowing oral argument applicable by force of the national rule.

M. Rule 35

One of the purposes of the amendments to rule 35¹⁷ is to treat a petition for rehearing en banc like a petition for panel rehearing so that the petition will suspend finality of the court of appeals' judgment and extend the time for filing a petition for writ of certiorari.¹⁸ Two terminology changes are made in the new rule: "en banc" is substituted for "in banc" and "petition" for rehearing en banc is substituted for "suggestion" for rehearing en banc. Under rule 35(b)(1), a petition for rehearing en banc must begin with a statement demonstrating that the case either (1) presents a conflict with Supreme Court precedent or that circuit's own precedent or (2) involves "one or more questions of exceptional importance," such as a split of authority among the circuits. Rule 35(b)(2) sets fifteen pages as the maximum length for petitions for rehearing and en banc rehearing,¹⁹ excluding material not counted under rule 32. For the purposes of determining length of the petitions, rule 35(b)(3) provides that if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document, unless separate filing is required by local rule.

N. Rule 41

New rule 41(d)(1) provides that the filing of a petition for rehearing en banc or motion to stay mandate delays the issuance of the mandate until the court disposes of the petition or motion. Under former rule 41, only a petition for panel rehearing delayed issuance of the mandate. New rule 41(c) provides that the mandate is effective when issued, i.e., it is effective even prior to its receipt by the trial court. Rule 41(d)(2)(B) changes the maximum period for a stay of mandate to ninety days,²⁰

17. Companion amendments were also made to rule 41. *See infra* Section N.

18. To fully effectuate this change will also require amendment to Supreme Court Rule 13.3. Although the time for filing a certiorari petition runs from the date of denial of a petition for rehearing or, if the rehearing is granted, from the date the final judgment is entered, under present rule 13.3, "[a] suggestion made to a United States court of appeals for a rehearing en banc is not a petition for rehearing within the meaning of this Rule unless so treated by the United States court of appeals."

19. The type-volume limitations in rule 32 do not apply.

20. Apparently the prior thirty-day maximum period was adopted when a party had to

unless good cause for extension is shown or the party who obtained the stay petitions for writ of certiorari within the period of the stay. In the latter case, the stay continues until the Supreme Court's final disposition.

O. FRAP Form 4

Form 4 has been substantially revised to obtain more detailed financial information needed to assess a party's eligibility to proceed in forma pauperis, including financial information for the party's spouse.

P. Rule 23 of the Federal Rules of Civil Procedure

In its preliminary draft, the Advisory Committee on Civil Rules proposed extensive changes to civil procedure rule 23.²¹ The Judicial Conference of the United States approved only a single amendment, creating rule 23(f). New rule 23(f) provides that a court of appeals, in its discretion, may permit an appeal from an order granting or denying class certification.²² Application must be made within ten days after entry of the order. The interlocutory appeal does not stay proceedings in the district court unless the district court or court of appeals so orders.

CONCLUSION

The wholesale revisions of the FRAP may seem overwhelming. However, while the new rules have extensive stylistic changes, many of the substantive revisions are welcome changes that clarify and resolve previous inconsistencies. The dramatic changes in rule 32 that determine the length of the briefs are likely the most significant substantive change for appellate practitioners; type-volume limitations are foreign to

file a petition for writ of certiorari in a criminal case within thirty days after entry of judgment. The rules now require a petition for writ of certiorari to be filed within ninety days of entry of judgment regardless whether the case is civil or criminal. S. CT. R. 13.1.

21. See Amendments to Federal Rules, 117 S. Ct. 317, 329-59 (1996).

22. The procedure for the interlocutory appeal is established in new rule 5. See *supra* Section D.

many practitioners. The form of motions is also affected by these changes and the substantial amendments to rule 27. The other major substantive changes in the new rules are the amendments to rule 35 and 41 that now treat a petition for rehearing en banc like a petition for rehearing. Understanding these substantive changes will allow the appellate practitioner to master the new rules.

APPENDIX 1. A SIDE-BY-SIDE COMPARISON OF SELECTED RULES FROM THE SUPERSEDED AND NEW FEDERAL RULES OF APPELLATE PROCEDURE.

This appendix contains the full text of Rules 3, 3.1, 4, 5, 5.1, 26, 26.1, 27, 28, 29, 32, 34, 35, and 41. For a full text comparison of all the old Federal Rules of Appellate Procedure and all the new Federal Rules of Appellate Procedure, see *The Journal's* website at <<http://www.ualr.edu/~appj/>>.

OLD Federal Rules of Appellate Procedure (1996 amendments)	NEW Federal Rules of Appellate Procedure (1998 amendments)
<p><i>TITLE II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS</i></p> <p><i>RULE 3. APPEAL AS OF RIGHT—HOW TAKEN</i></p> <p><i>(a) Filing the Notice of Appeal. An appeal permitted by law as of right from a district court to a court of appeals must be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with sufficient copies of the notice of appeal to enable the clerk to comply promptly with the requirements of subdivision (d) of this Rule 3. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. Appeals by permission under 28 U.S.C. § 1292(b) and appeals in bankruptcy must be taken in the manner prescribed by Rule 5 and Rule 6 respectively.</i></p>	<p>TITLE II. APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT</p> <p>RULE 3. APPEAL AS OF RIGHT—HOW TAKEN</p> <p>(a) Filing the Notice of Appeal.</p> <p>(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).</p> <p>(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.</p> <p>(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.</p> <p>(4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may</p>

(b) Joint or Consolidated Appeals. If two or more persons are entitled to appeal from a judgment or order of a district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the court of appeals upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of the Notice of Appeal. A notice of appeal must specify the party or parties taking the appeal by naming each appellant in either the caption or the body of the notice of appeal. An attorney representing more than one party may fulfill this requirement by describing those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X." A notice of appeal filed pro se is filed on behalf of the party signing the notice and the signer's spouse and minor children, if they are parties, unless the notice of appeal clearly indicates a contrary intent. In a class action, whether or not the class has been certified, it is sufficient for the notice to name one person qualified to bring the appeal as representative of the class. A notice of appeal also must designate the judgment, order, or part thereof appealed from, and must name the court to which the appeal is taken. An appeal will not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear

be taken only in the manner prescribed by Rules 5 and 6, respectively.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form I in the Appendix of Forms is a suggested form of a notice of appeal.

(d) Serving the Notice of Appeal.

(1) The district clerk must serve notice of the

from the notice. Form 1 in the Appendix of Forms is a suggested form for a notice of appeal.

(d) Serving the Notice of Appeal. The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record (apart from the appellant's), or, if a party is not represented by counsel, to the party's last known address. The clerk of the district court shall forthwith send a copy of the notice and of the docket entries to the clerk of the court of appeals named in the notice. The clerk of the district court shall likewise send a copy of any later docket entry in the case to the clerk of the court of appeals. When a defendant appeals in a criminal case, the clerk of the district court shall also serve a copy of the notice of appeal upon the defendant, either by personal service or by mail addressed to the defendant. The clerk shall note on each copy served the date when the notice of appeal was filed and, if the notice of appeal was filed in the manner provided in Rule 4(c) by an inmate confined in an institution, the date when the clerk received the notice of appeal. The clerk's failure to serve notice does not affect the validity of the appeal. Service is sufficient notwithstanding the death of a party or the party's counsel. The clerk shall note in the docket the names of the parties to whom the clerk mails copies, with the date of mailing.

(e) Payment of Fees. Upon the filing of any separate or joint notice of appeal from the district court, the appellant shall pay to the clerk of the district court such fees as are established by statute, and also the docket

filing of a notice of appeal by mailing a copy to each party's counsel of record—excluding the appellant's—or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries—and any later docket entries—to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.

(3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk mails copies, with the date of mailing. Service is sufficient despite the death of a party or the party's counsel.

(e) Payment of Fees. Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.

<p><i>fee prescribed by the Judicial Conference of the United States, the latter to be received by the clerk of the district court on behalf of the court of appeals.</i></p>	
<p>RULE 3.1. APPEAL FROM A JUDGMENT ENTERED BY A MAGISTRATE JUDGE IN A CIVIL CASE <i>When the parties consent to a trial before a magistrate judge under 28 U.S.C. § 636(c)(1), any appeal from the judgment must be heard by the court of appeals in accordance with 28 U.S.C. § 636(c)(3), unless the parties consent to an appeal on the record to a district judge and thereafter, by petition only, to the court of appeals, in accordance with 28 U.S.C. § 636(c)(4). An appeal under 28 U.S.C. § 636(c)(3) must be taken in identical fashion as an appeal from any other judgment of the district court.</i></p>	<p>RULE 3.1. APPEAL FROM A JUDGMENT OF A MAGISTRATE JUDGE IN A CIVIL CASE [Abrogated]</p>
<p>RULE 4. APPEAL AS OF RIGHT—WHEN TAKEN (a) Appeal in a Civil Case. (1) Except as provided in paragraph (a)(4) of this Rule, in a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date when the clerk received the notice and send it to the clerk of the district court and the notice will be treated</p>	<p>RULE 4. APPEAL AS OF RIGHT—WHEN TAKEN (a) Appeal in a Civil Case. (1) Time for Filing a Notice of Appeal. (A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered. (B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered. (2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry. (3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a</p>

as filed in the district court on the date so noted.

(2) A notice of appeal filed after the court announces a decision or order but before the entry of the judgment or order is treated as filed on the date of and after the entry.

(3) If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.

(4) If any party files a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion under the Federal Rules of Civil Procedure:

(A) for judgment under Rule 50(b);

(B) to amend or make additional findings of fact under Rule 52(b), whether or not granting the motion would alter the judgment;

(C) to alter or amend the judgment under Rule 59;

(D) for attorney's fees under Rule 54 if a district court under Rule 58 extends the time for appeal;

(E) for a new trial under Rule 59; or

(F) for relief under Rule 60 if the motion is filed no later than 10 days after the entry of judgment.

A notice of appeal filed after announcement or entry of the judgment but before disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the

notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days (computed using Federal Rule of Civil Procedure 6(a)) after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining

entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Appellate Rule 3(c), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment shall file a notice, or amended notice, of appeal within the time prescribed by this Rule 4 measured from the entry of the order disposing of the last such motion outstanding. No additional fees will be required for filing an amended notice.

(5) The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a). Any such motion which is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(6) The district court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that no party would be prejudiced, may, upon motion filed within 180 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of

motion.

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and

(C) the court finds that no party would be prejudiced.

(7) Entry Defined. A judgment or order is entered for purposes of this Rule 4(a) when it is entered in compliance with Rules 58 and 79(a)

14 days from the date of entry of the order reopening the time for appeal.

(7) A judgment or order is entered within the meaning of this Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Federal Rules of Civil Procedure.

(b) Appeal in a Criminal Case. In a criminal case, a defendant shall file the notice of appeal in the district court within 10 days after the entry either of the judgment or order appealed from, or of a notice of appeal by the Government. A notice of appeal filed after the announcement of a decision, sentence, or order—but before entry of the judgment or order—is treated as filed on the date of and after the entry. If a defendant makes a timely motion specified immediately below, in accordance with the Federal Rules of Criminal Procedure, an appeal from a judgment of conviction must be taken within 10 days after the entry of the order disposing of the last such motion outstanding, or within 10 days after the entry of the judgment of conviction, whichever is later. This provision applies to a timely motion:

(1) for judgment of acquittal;

(2) for arrest of judgment;

(3) for a new trial on any ground other than newly discovered evidence; or

(4) for a new trial based on the ground of newly discovered evidence if the motion is made before or within 10 days after entry of the judgment.

A notice of appeal filed after the court announces a decision, sentence, or order but before it disposes of any of the above motions, is ineffective until the date of the

of the Federal Rules of Civil Procedure.

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision, sentence, or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 10 days after the entry of the order disposing of the last such remaining motion, or within 10 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 10 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order—but

entry of the order disposing of the last such motion outstanding, or until the date of the entry of the judgment of conviction, whichever is later. Notwithstanding the provisions of Rule 3(c), a valid notice of appeal is effective without amendment to appeal from an order disposing of any of the above motions. When an appeal by the government is authorized by statute, the notice of appeal must be filed in the district court within 30 days after (i) the entry of the judgment or order appealed from or (ii) the filing of a notice of appeal by any defendant. A judgment or order is entered within the meaning of this subdivision when it is entered on the criminal docket. Upon a showing of excusable neglect, the district court may—before or after the time has expired, with or without motion and notice—extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision.

The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Fed. R. Crim. P. 35(c), nor does the filing of a motion under Fed. R. Crim. P. 35(c) affect the validity of a notice of appeal filed before entry of the order disposing of the motion.

(c) Appeal by an Inmate Confined in an Institution. If an inmate confined in an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a notarized statement or

before it disposes of any of the motions referred to in Rule 4(b)(3)(A)—becomes effective upon the later of the following:

- (i) the entry of the order disposing of the last such remaining motion; or*
- (ii) the entry of the judgment of conviction.*

(C) A valid notice of appeal is effective—without amendment—to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) Motion for Extension of Time. Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(c), nor does the filing of a motion under 35(c) affect the validity of a notice of appeal filed before entry of the order disposing of the motion.

(6) Entry Defined. A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of

<p><i>by a declaration (in compliance with 28 U.S.C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid. In a civil case in which the first notice of appeal is filed in the manner provided in this subdivision (c), the 14-day period provided in paragraph (a)(3) of this Rule 4 for another party to file a notice of appeal runs from the date when the district court receives the first notice of appeal. In a criminal case in which a defendant files a notice of appeal in the manner provided in this subdivision (c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's receipt of the defendant's notice of appeal.</i></p>	<p>which must set forth the date of deposit and state that first-class postage has been prepaid.</p> <p>(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court docketes the first notice.</p> <p>(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.</p> <p>(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.</p>
<p>RULE 5. APPEAL BY PERMISSION UNDER 28 U.S.C. § 1292(b)</p> <p><i>(a) Petition for Permission to Appeal. An appeal from an interlocutory order containing the statement prescribed by 28 U.S.C. § 1292(b) may be sought by filing a petition for permission to appeal with the clerk of the court of appeals within 10 days after the entry of such order in the district court with proof of service on all other parties to the action in the district court. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 10 days after entry of the order as amended.</i></p> <p><i>(b) Content of Petition; Answer. The</i></p>	<p>RULE 5. APPEAL BY PERMISSION</p> <p>(a) Petition for Permission to Appeal.</p> <p>(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition for permission to appeal. The petition must be filed with the circuit clerk with proof of service on all other parties to the district-court action.</p> <p>(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal.</p> <p>(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend</p>

petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the district court; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question, and why an immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusions of law and opinion relating thereto. Within 7 days after service of the petition an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.

(c) Form of Papers; Number of Copies. All papers may be typewritten. An original and three copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

(d) Grant of Permission; Cost Bond; Filing of Record. Within 10 days after the entry of an order granting permission to appeal the appellant shall (1) pay to the clerk of the district court the fees established by statute and the docket fee prescribed by the Judicial Conference of the United States and (2) file a bond for costs if required pursuant to Rule 7. The clerk of the district court shall notify the clerk of the court of appeals of the payment of the fees. Upon receipt of such notice the clerk of the court of appeals shall enter the appeal upon the docket. The record shall be transmitted and filed in

its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order.

(b) Contents of the Petition; Answer or Cross-Petition; Oral Argument.

(1) The petition must include the following:

- (A) the facts necessary to understand the question presented;
- (B) the question itself;
- (C) the relief sought;
- (D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and
- (E) an attached copy of:

- (i) the order, decree, or judgment complained of and any related opinion or memorandum, and
- (ii) any order stating the district court's permission to appeal or finding that the necessary conditions are met.

(2) A party may file an answer in opposition or a cross-petition within 7 days after the petition is served.

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) Form of Papers; Number of Copies. All papers must conform to Rule 32(a)(1). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(d) Grant of Permission; Fees; Cost Bond; Filing the Record.

(1) Within 10 days after the entry of the order granting permission to appeal, the appellant must:

- (A) pay the district clerk all required fees; and
- (B) file a cost bond if required under Rule 7.

(2) A notice of appeal need not be filed. The

<p><i>accordance with Rules 11 and 12(b). A notice of appeal need not be filed.</i></p>	<p>date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules. (3) The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receiving this notice, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c).</p>
<p>RULE 5.1. APPEAL BY PERMISSION UNDER 28 U.S.C. § 636(c)(5) (a) Petition for Leave to Appeal; Answer or Cross Petition. <i>An appeal from a district court judgment, entered after an appeal under 28 U.S.C. § 636(c)(4) to a district judge from a judgment entered upon direction of a magistrate judge in a civil case, may be sought by filing a petition for leave to appeal. An appeal on petition for leave to appeal is not a matter of right, but its allowance is a matter of sound judicial discretion. The petition shall be filed with the clerk of the court of appeals within the time provided by Rule 4(a) for filing a notice of appeal, with proof of service on all parties to the action in the district court. A notice of appeal need not be filed. Within 14 days after service of the petition, a party may file an answer in opposition or a cross petition.</i> (b) Content of Petition; Answer. <i>The petition for leave to appeal shall contain a statement of the facts necessary to an understanding of the questions to be presented by the appeal; a statement of those questions and of the relief sought; a statement of the reasons why in the opinion of the petitioner the appeal should be allowed; and a copy of the order, decree or judgment complained of and any</i></p>	<p>RULE 5.1. APPEAL BY LEAVE UNDER 28 U.S.C. § 636(C)(5) [Abrogated]</p>

<p><i>opinion or memorandum relating thereto. The petition and answer shall be submitted to a panel of judges of the court of appeals without oral argument unless otherwise ordered.</i></p> <p><i>(c) Form of Papers; Number of Copies. All papers may be typewritten. An original and three copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.</i></p> <p><i>(d) Allowance of the Appeal; Fees; Cost Bond; Filing of Record. Within 10 days after the entry of an order granting the appeal, the appellant shall (1) pay to the clerk of the district court the fees established by statute and the docket fee prescribed by the Judicial Conference of the United States and (2) file a bond for costs if required pursuant to Rule 7. The clerk of the district court shall notify the clerk of the court of appeals of the payment of the fees. Upon receipt of such notice, the clerk of the court of appeals shall enter the appeal upon the docket. The record shall be transmitted and filed in accordance with Rules 11 and 12(b).</i></p>	
<p>RULE 26. COMPUTATION AND EXTENSION OF TIME</p> <p><i>(a) Computation of Time. In computing any period of time prescribed or allowed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or</i></p>	<p>RULE 26. COMPUTING AND EXTENDING TIME</p> <p>(a) Computing Time. The following rules apply in computing any period of time specified in these rules or in any local rule, court order, or applicable statute:</p> <p>(1) Exclude the day of the act, event, or default that begins the period.</p> <p>(2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 7 days, unless stated in calendar days.</p> <p>(3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or—if the act</p>

other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States. It shall also include a day appointed as a holiday by the state wherein the district court which rendered the judgment or order which is or may be appealed from is situated, or by the state wherein the principal office of the clerk of the court of appeals in which the appeal is pending is located.

(b) Enlargement of Time. The court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal, a petition for allowance, or a petition for permission to appeal. Nor may the court enlarge the time prescribed by law for filing a petition to enjoin, set aside, suspend, modify, enforce or otherwise review, or a notice of appeal from, an order of an administrative agency, board, commission or officer of the United States,

to be done is filing a paper in court—a day on which the weather or other conditions make the clerk's office inaccessible.

(4) As used in this rule, "legal holiday" means New Year's Day, Martin Luther King, Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President, Congress, or the state in which is located either the district court that rendered the challenged judgment or order, or the circuit clerk's principal office.

(b) Extending Time. For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

(1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or
 (2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

(c) Additional Time after Service. When a party is required or permitted to act within a prescribed period after a paper is served on that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service.

<p><i>except as specifically authorized by law.</i></p> <p><i>(c) Additional Time after Service. When a party is required or permitted to act within a prescribed period after service of a paper upon that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service.</i></p>	
<p>RULE 26.1. CORPORATE DISCLOSURE STATEMENT</p> <p><i>Any non-governmental corporate party to a civil or bankruptcy case or agency review proceeding and any non-governmental corporate defendant in a criminal case must file a statement identifying all parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates that have issued shares to the public. The statement must be filed with a party's principal brief or upon filing a motion, response, petition, or answer in the court appeals, whichever first occurs, unless a local rule requires earlier filing. Whenever the statement is filed before a party's principal brief, an original and three copies of the statement must be filed unless the court requires the filing of a different number by local rule or by order in a particular case. The statement must be included in front of the table of contents in a party's principal brief even if the statement was previously filed.</i></p>	<p>RULE 26.1. CORPORATE DISCLOSURE STATEMENT</p> <p>(a) Who Must File. Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.</p> <p>(b) Time for Filing. A party must file the statement with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents.</p> <p>(c) Number of Copies. If the statement is filed before the principal brief, the party must file an original and 3 copies unless the court requires a different number by local rule or by order in a particular case.</p>
<p>RULE 27. MOTIONS</p> <p><i>(a) Content of Motions; Response. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion</i></p>	<p>RULE 27. MOTIONS</p> <p>(a) In General.</p> <p>(1) Application for Relief. An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.</p>

shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for procedural order [for which see subdivision (b)] within 7 days after service of the motion, but motions authorized by Rules 8, 9, 18 and 41 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion.

(b) Determination of Motions for Procedural Orders. Notwithstanding the provisions of (a) of this Rule 27 as to motions generally, motions for procedural orders, including any motion under Rule 26(b), may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. Any party adversely affected by such action may by application to the court request consideration, vacation or modification of such action.

(c) Power of a Single Judge to Entertain Motions. In addition to the authority expressly conferred by these rules or by law, a single judge of a court of appeals may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise determine an appeal or other

(2) Contents of a Motion.

(A) Grounds and Relief Sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) Accompanying Documents.

(i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.

(ii) An affidavit must contain only factual information, not legal argument.

(iii) A motion seeking substantive relief must include a copy of the trial court's opinion or agency's decision as a separate exhibit.

(C) Documents Barred or not Required.

(i) A separate brief supporting or responding to a motion must not be filed.

(ii) A notice of motion is not required.

(iii) A proposed order is not required.

(3) Response.

(A) Time to File. Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 10 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.

(B) Request for Affirmative Relief. A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the response must alert the court to the request for relief.

(4) Reply to Response. Any reply to a response must be filed within 7 days after service of the response. A reply must not present matters that do not relate to the response.

(b) Disposition of a Motion for a Procedural

proceeding, and except that a court of appeals may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single judge may be reviewed by the court.

(d) Form of Papers; Number of Copies. All papers relating to a motion may be typewritten. An original and three copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

Order. The court may act on a motion for a procedural order—including a motion under Rule 26(b)—at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) Power of a Single Judge to Entertain a Motion. A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The court may review the action of a single judge.

(d) Form of Papers; Page Limits; and Number of Copies.

(1) Format.

(A) **Reproduction.** A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) **Cover.** A cover is not required but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed.

(C) **Binding.** The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) **Paper Size, Line Spacing, and Margins.** The

	<p>document must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.</p> <p>(2) Page Limits. A motion or a response to a motion must not exceed 20 pages, exclusive of the corporate disclosure statement and accompanying documents authorized by Rule 27(a)(2)(B), unless the court permits or directs otherwise. A reply to a response must not exceed 10 pages.</p> <p>(3) Number of Copies. An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.</p> <p>(e) Oral Argument. A motion will be decided without oral argument unless the court orders otherwise.</p>
<p>RULE 28. BRIEFS</p> <p><i>(a) Appellant's Brief. The brief of the appellant must contain, under appropriate headings and in the order here indicated:</i></p> <p><i>(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.</i></p> <p><i>(2) A statement of subject matter and appellate jurisdiction. The statement shall include: (i) a statement of the basis for subject matter jurisdiction in the district court or agency, with citation to applicable statutory provisions and with reference to the relevant facts to establish such jurisdiction; (ii) a statement of the basis for jurisdiction in the court of appeals,</i></p>	<p>RULE 28. BRIEFS</p> <p>(a) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:</p> <p>(1) a corporate disclosure statement if required by Rule 26.1;</p> <p>(2) a table of contents, with page references;</p> <p>(3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;</p> <p>(4) a jurisdictional statement, including:</p> <p>(A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;</p> <p>(B) the basis for the court of appeals' jurisdiction, with citations to applicable</p>

with citation to applicable statutory provisions and with reference to the relevant facts to establish such jurisdiction; the statement shall include relevant filing dates establishing the timeliness of the appeal or petition for review and (a) shall state that the appeal is from a final order or a final judgment that disposes of all claims with respect to all parties or, if not, (b) shall include information establishing that the court of appeals has jurisdiction on some other basis.

(3) A statement of the issues presented for review.

(4) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subdivision (e)).

(5) A summary of argument. The summary should contain a succinct, clear, and accurate statement of the arguments made in the body of the brief. It should not be a mere repetition of the argument headings.

(6) An argument. The argument must contain the contentions of the appellant on the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on. The argument must also include for each issue a concise statement of the applicable standard of review; this statement may appear in the discussion of each issue or under a separate heading placed before the discussion of the issues.

(7) A short conclusion stating the precise

statutory provisions and stating relevant facts establishing jurisdiction;

(C) the filing dates establishing the timeliness of the appeal or petition for review; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;

(5) a statement of the issues presented for review;

(6) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;

(7) a statement of facts relevant to the issues submitted for review with appropriate references to the record (see Rule 28(e));

(8) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(9) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(10) a short conclusion stating the precise relief sought; and

(11) the certificate of compliance, if required by Rule 32(a)(7).

(b) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 28(a)(1)-(9) and (11), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

relief sought.

(b) Appellee's Brief. The brief of the appellee must conform to the requirements of paragraphs (a)(1)-(6), except that none of the following need appear unless the appellee is dissatisfied with the statement of the appellant:

- (1) the jurisdictional statement;
- (2) the statement of the issues;
- (3) the statement of the case;
- (4) the statement of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of court. All reply briefs shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the reply brief where they are cited.

(d) References in Briefs to Parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore," etc.

(e) References in Briefs to the Record. References in the briefs to parts of the record reproduced in the appendix filed with the brief of the appellant (see Rule

- (2) the statement of the issues;
- (3) the statement of the case;
- (4) the statement of the facts; and
- (5) the statement of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the appellee's brief. An appellee who has cross-appealed may file a brief in reply to the appellant's response to the issues presented by the cross-appeal. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the reply brief where they are cited.

(d) References to Parties. In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore."

(e) References to the Record. References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:

- Answer p. 7;
- Motion for Judgment p. 2;
- Transcript p. 231.

Only clear abbreviations may be used. A party

30(a)) shall be to the pages of the appendix at which those parts appear. If the appendix is prepared after the briefs are filed, references in the briefs to the record shall be made by one of the methods allowed by Rule 30(c). If the record is reproduced in accordance with the provisions of Rule 30(f), or if references are made in the briefs to parts of the record not reproduced, the references shall be to the pages of the parts of the record involved; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, etc. If determination of the issues presented requires the study of statutes, rules, regulations, etc. or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

(g) Length of Briefs. Except by permission of the court, or as specified by local rule of the court of appeals, principal briefs must not exceed 50 pages, and reply briefs must not exceed 25 pages, exclusive of pages containing the corporate disclosure statement, table of contents, tables of citations, proof of service, and any addendum containing statutes, rules, regulations, etc.

(h) Briefs in Cases Involving Cross Appeals. If a cross appeal is filed, the

referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, etc. If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

(g) [Reserved]

(h) Briefs in a Case Involving a Cross-Appeal. If a cross-appeal is filed, the party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30, 31, and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by agreement of the parties or by court order. With respect to appellee's cross-appeal and response to appellant's brief, appellee's brief must conform to the requirements of Rule 28(a)(1)-(11). But an appellee who is satisfied with appellant's statement need not include a statement of the case or of the facts.

(i) Briefs in a Case Involving Multiple Appellants or Appellees. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(j) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed—or after oral argument but before decision—a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter

party who first files a notice of appeal, or in the event that the notices are filed on the same day, the plaintiff in the proceeding below shall be deemed the appellant for the purposes of this rule and Rules 30 and 31, unless the parties otherwise agree or the court otherwise orders. The brief of the appellee shall conform to the requirements of subdivision (a)(1)-(6) of this rule with respect to the appellee's cross appeal as well as respond to the brief of the appellant except that a statement of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(i) Briefs in Cases Involving Multiple Appellants or Appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) Citation of Supplemental Authorities. When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

must state without argument the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. Any response must be made promptly and must be similarly limited.

RULE 29. BRIEF OF AN AMICUS CURIAE

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion or at the request of the court, except that consent or leave shall not be required when the brief is presented by the United States or an officer or agency thereof, or by a State, Territory or Commonwealth. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Save as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the court for cause shown shall grant leave for a later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons.

RULE 29. BRIEF OF AN AMICUS CURIAE

(a) When Permitted. The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.

(b) Motion for Leave to File. The motion must be accompanied by the proposed brief and state:

- (1) the movant's interest; and
- (2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) Contents and Form. An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required of parties by Rule 26.1. An amicus brief need not comply with Rule 28, but must include the following:

- (1) a table of contents, with page references;
- (2) a table of authorities—cases (alphabetically arranged), statutes and other authorities—with references to the pages of the brief where they are cited;
- (3) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;
- (4) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and
- (5) a certificate of compliance, if required by Rule 32(a)(7).

	<p>(d) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.</p> <p>(e) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.</p> <p>(f) Reply Brief. Except by the court's permission, an amicus curiae may not file a reply brief.</p> <p>(g) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission.</p>
<p>RULE 32. FORM OF BRIEFS, THE APPENDIX AND OTHER PAPERS</p> <p>(a) Form of Briefs and the Appendix. <i>Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. Carbon copies of briefs and appendices may not be submitted without permission of the court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear in at least 11 point type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type</i></p>	<p>RULE 32. FORM OF BRIEFS, APPENDICES, AND OTHER PAPERS</p> <p>(a) Form of a Brief.</p> <p>(1) Reproduction.</p> <p>(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.</p> <p>(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.</p> <p>(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.</p> <p>(2) Cover. Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or</p>

matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text. In patent cases the pages of briefs and appendices may be of such size as is necessary to utilize copies of patent documents. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this rule may be inserted in the appendix; such pages may be informally renumbered if necessary. If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The front covers of the briefs and of appendices, if separately printed, shall contain: (1) the name of the court and the number of the case; (2) the title of the case (see Rule 12(a)); (3) the nature of the proceeding in the court (e.g., Appeal; Petition for Review) and the name of the court, agency, or board below; (4) the title of the document (e.g., Brief for Appellant, Appendix); and (5) the names and addresses of counsel representing the party on whose behalf the document is filed.

(b) Form of Other Papers. Petitions for rehearing shall be produced in a manner prescribed by subdivision (a). Motions and other papers may be produced in like

amicus curiae's, green; and any reply brief, gray. The front cover of a brief must contain: (A) the number of the case centered at the top; (B) the name of the court; (C) the title of the case (see Rule 12(a)); (D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below; (E) the title of the brief, identifying the party or parties for whom the brief is filed; and (F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) Binding. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) Paper Size, Line Spacing, and Margins. The brief must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) Typeface. Either a proportionally spaced or a monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10 1/2 characters per inch.

(6) Type Styles. A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) Length.

(A) Page limitation. A principal brief may not

manner, or they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the court shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B) and (C).

(B) Type-volume limitation.

(i) A principal brief is acceptable if:

- it contains no more than 14,000 words; or
- it uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

(iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.

(C) Certificate of Compliance. A brief submitted under Rule 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:

- (i) the number of words in the brief; or
- (ii) the number of lines of monospaced type in the brief.

(b) Form of an Appendix. An appendix must comply with Rule 32(a)(1), (2), (3), and (4), with the following exceptions:

- (1) The cover of a separately bound appendix must be white.
- (2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.
- (3) When necessary to facilitate inclusion of odd-sized documents such as technical

	<p>drawings, an appendix may be a size other than 8 1/2 by 11 inches, and need not lie reasonably flat when opened.</p> <p>(c) Form of Other Papers.</p> <p>(1) Motion. The form of a motion is governed by Rule 27(d).</p> <p>(2) Other Papers. Any other paper, including a petition for rehearing and a petition for rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:</p> <p>(A) a cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2); and</p> <p>(B) Rule 32(a)(7) does not apply.</p> <p>(d) Local Variation. Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule.</p>
<p>RULE 34. ORAL ARGUMENT</p> <p><i>(a) In General; Local Rule. Oral argument shall be allowed in all cases unless pursuant to local rule a panel of three judges, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. Any such local rule shall provide any party with an opportunity to file a statement setting forth the reasons why oral argument should be heard. A general statement of the criteria employed in the administration of such local rule shall be published in or with the rule and such criteria shall conform substantially to the following minimum standard: Oral argument will be allowed unless (1) the appeal is frivolous; or</i></p>	<p>RULE 34. ORAL ARGUMENT</p> <p>(a) In General.</p> <p>(1) Party's Statement. Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.</p> <p>(2) Standards. Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:</p> <p>(A) the appeal is frivolous;</p> <p>(B) the dispositive issue or issues have been authoritatively decided; or</p> <p>(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.</p>

(2) *the dispositive issue or set of issues has been recently authoritatively decided; or*
(3) *the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.*

(b) Notice of Argument; Postponement. The clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

(c) Order and Content of Argument. The appellant is entitled to open and conclude the argument. Counsel may not read at length from briefs, records, or authorities.

(d) Cross and Separate Appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a cross appeal, the party who first files a notice of appeal, or in the event that the notices are filed on the same day the plaintiff in the proceeding below, shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) Non-appearance of Parties. If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if

(b) Notice of Argument; Postponement. The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) Order and Contents of Argument. The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(d) Cross-Appeals and Separate Appeals. If there is a cross-appeal, Rule 28(h) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) Nonappearance of a Party. If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) Submission on Briefs. The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

<p><i>present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.</i></p> <p><i>(f) Submission on Briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.</i></p> <p><i>(g) Use of Physical Exhibits at Argument; Removal. If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the court room before the court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the court room unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.</i></p>	
<p>RULE 35. DETERMINATION OF CAUSES BY THE COURT IN BANC</p> <p><i>(a) When Hearing or Rehearing In Banc Will Be Ordered. A majority of the circuit judges who are in regular active service may order that an appeal or other proceeding be heard or reheard by the court of appeals in banc. Such a hearing or rehearing is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.</i></p> <p><i>(b) Suggestion of a Party for Hearing or Rehearing In Banc. A party may suggest the appropriateness of a hearing or rehearing in banc. No response shall be</i></p>	<p>RULE 35. EN BANC DETERMINATION</p> <p>(a) When Hearing or Rehearing En Banc May Be Ordered. A majority of the circuit judges who are in regular active service may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:</p> <p>(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or</p> <p>(2) the proceeding involves a question of exceptional importance.</p> <p>(b) Petition for Hearing or Rehearing En Banc. A party may petition for a hearing or rehearing en banc.</p> <p>(1) The petition must begin with a statement that either:</p>

filed unless the court shall so order. The clerk shall transmit any such suggestion to the members of the panel and the judges of the court who are in regular active service but a vote need not be taken to determine whether the cause shall be heard or reheard in banc unless a judge in regular active service or a judge who was a member of the panel that rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

(c) Time for Suggestion of a Party for Hearing or Rehearing In Banc; Suggestion Does Not Stay Mandate. If a party desires to suggest that an appeal be heard initially in banc, the suggestion must be made by the date on which the appellee's brief is filed. A suggestion for a rehearing in banc must be made within the time prescribed by Rule 40 for filing a petition for rehearing, whether the suggestion is made in such a petition or otherwise. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the court of appeals or stay the issuance of the mandate.

(d) Number of Copies. The number of copies that must be filed may be prescribed by local rule and may be altered by order in a particular case.

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

(2) Except by the court's permission, a petition for an en banc hearing or rehearing must not exceed 15 pages, excluding material not counted under Rule 32.

(3) For purposes of the page limit in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.

(c) Time for Petition for Hearing or Rehearing En Banc. A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.

(d) Number of Copies. The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

(e) Response. No response may be filed to a petition for an en banc consideration unless the court orders a response.

(f) Call for a Vote. A vote need not be taken to

	<p>determine whether the case will be heard or reheard en banc unless a judge calls for a vote.</p>
<p>RULE 41. ISSUANCE OF MANDATE; STAY OF MANDATE</p> <p><i>(a) Date of Issuance. The mandate of the court must issue 7 days after the expiration of the time for filing a petition for rehearing unless such a petition is filed or the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the court, if any, and any direction as to costs shall constitute the mandate, unless the court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court. If the petition is denied, the mandate must issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.</i></p> <p><i>(b) Stay of Mandate Pending Petition for Certiorari. A party who files a motion requesting a stay of mandate pending petition to the Supreme Court for a writ of certiorari must file, at the same time, proof of service on all other parties. The motion must show that a petition for certiorari would present a substantial question and that there is good cause for a stay. The stay cannot exceed 30 days unless the period is extended for cause shown or unless during the period of the stay, a notice from the Clerk of the Supreme Court is filed showing that the party who has obtained the stay has filed a petition for the writ, in which case the stay will continue until final disposition by the Supreme Court. The court of appeals must issue the mandate immediately when a</i></p>	<p>RULE 41. MANDATE: CONTENTS; ISSUANCE AND EFFECTIVE DATE; STAY</p> <p>(a) Contents. Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court’s opinion, if any, and any direction about costs.</p> <p>(b) When Issued. The court’s mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.</p> <p>(c) Effective Date. The mandate is effective when issued.</p> <p>(d) Staying the Mandate.</p> <p>(1) On Petition for Rehearing or Motion. The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.</p> <p>(2) Pending Petition for Certiorari.</p> <p>(A) A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.</p> <p>(B) The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court’s final disposition.</p>

<p><i>copy of a Supreme Court order denying the petition for writ of certiorari is filed. The court may require a bond or other security as a condition to the grant or continuance of a stay of the mandate.</i></p>	<p>(C) The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.</p> <p>(D) The court of appeals must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed.</p>
---	---

